

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EDWARD F. KELLER,

Plaintiff,

v.

No. CIV 09-960 BB/ACT

**NEW MEXICO DEPARTMENT OF
HEALTH, DIVISION OF HEALTH
IMPROVEMENT,**

Defendant.

ORDER

THIS MATTER is before the Court for consideration of a motion to dismiss [Doc. 39] filed by Defendant. After a review of the pending motions in this case, the Court concludes the motion to dismiss has been superseded by Defendant's later-filed motion for summary judgment [Doc. 50]. The same issues discussed by the parties in connection with the motion to dismiss are raised and debated in the summary-judgment papers. The latter, however, have the advantage of being based on some level of factual development. For this reason, the motion to dismiss will be denied as moot, and all arguments raised in connection with that motion will instead be considered in deciding the pending motion for summary judgment.

It is therefore ORDERED that the motion to dismiss be, and hereby is, DENIED, as it has been superseded and as a result is moot.



BRUCE D. BLACK
United States District Judge